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SENATE BILL 1060

**48TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2007**

INTRODUCED BY

Nancy Rodriguez

AN ACT

RELATING TO PUBLIC FINANCE; CREATING A SEPARATE ADMINISTRATIVE  
FUND FOR THE WASTEWATER FACILITY CONSTRUCTION LOAN ACT;  
DEFINING TERMS; MAKING AN APPROPRIATION.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. A new section of the Wastewater Facility  
Construction Loan Act is enacted to read:

"[NEW MATERIAL] CLEAN WATER ADMINISTRATIVE FUND--CREATED--  
USE.--

A. The "clean water administrative fund" is created  
in the state treasury and shall be administered by the  
department as agent for the commission. The clean water  
administrative fund shall be a dedicated fund, and all money in  
the clean water administrative fund is appropriated to the  
department to be used solely to administer the wastewater

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1 facility construction loan fund, which may include water  
2 quality planning and water quality analysis and protection  
3 studies if authorized by the department and, if necessary, the  
4 United States environmental protection agency. The commission  
5 may establish procedures, adopt regulations and set fees as  
6 required to administer the clean water administrative fund in  
7 accordance with the Clean Water Act and state law. The clean  
8 water administrative fund shall consist of money deposited  
9 from:

10 (1) loan administration fees collected by the  
11 department after the effective date of this section on loans  
12 made from the wastewater facility construction loan fund;

13 (2) interest earned on investment of the clean  
14 water administrative fund;

15 (3) grants from the federal government  
16 allotted to the state for the clean water administrative fund;

17 (4) funds as appropriated by the legislature  
18 for administration to implement the provisions of the Clean  
19 Water Act; and

20 (5) any other public or private money  
21 dedicated to the clean water administrative fund.

22 B. Money in the clean water administrative fund not  
23 currently needed for the operation of the fund or otherwise  
24 dedicated may be invested according to the provisions of  
25 Chapter 6, Article 10 NMSA 1978, and all interest earned on

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1 such investments shall be credited to the clean water  
2 administrative fund. Money remaining in the clean water  
3 administrative fund at the end of any fiscal year shall not  
4 revert to the general fund but shall accrue to the credit of  
5 the clean water administrative fund.

6 C. The department shall establish fiscal controls  
7 and accounting procedures that are sufficient to ensure proper  
8 accounting for clean water administrative fund payments,  
9 disbursements and balances and shall provide an annual report  
10 and an annual independent audit on the clean water  
11 administrative fund to the governor and to the United States  
12 environmental protection agency as required by the Clean Water  
13 Act."

14 Section 2. Section 74-6A-3 NMSA 1978 (being Laws 1986,  
15 Chapter 72, Section 3, as amended) is amended to read:

16 "74-6A-3. DEFINITIONS.--As used in the Wastewater  
17 Facility Construction Loan Act:

18 A. "administrative fee" means a fee assessed and  
19 collected by the department from a local authority on each loan  
20 and expressed as a percentage per year on the outstanding  
21 principal amount of the loan, payable by the borrower on the  
22 same date that principal and interest on the loan are due, for  
23 deposit in the clean water administrative fund;

24 [~~A.~~] B. "commission" means the water quality  
25 control commission;

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1           ~~[B-]~~ C. "division" or "department" means the  
2           ~~[environmental improvement division of the health and~~  
3           ~~environment]~~ department of environment;

4           ~~[G-]~~ D. "financial assistance" means loans, the  
5           purchase or refinancing of existing local political subdivision  
6           obligations, loan guarantees, credit enhancement techniques to  
7           reduce interest on loans and bonds, bond insurance and bond  
8           guarantees or any combination of these purposes;

9           ~~[D-]~~ E. "fund" means the wastewater facility  
10          construction loan fund;

11          ~~[E-]~~ F. "local authority" means any municipality,  
12          county, incorporated county, sanitation district, water and  
13          sanitation district or any similar district, recognized Indian  
14          tribe or other issuing agency created pursuant to a joint  
15          powers agreement acting on behalf of any entity listed in this  
16          subsection;

17          ~~[F-]~~ G. "operate and maintain" means to perform all  
18          necessary activities, including replacement of equipment or  
19          appurtenances, to ~~[assure]~~ ensure the dependable and economical  
20          function of a wastewater facility in accordance with its  
21          intended purpose;

22          ~~[G-]~~ H. "wastewater facility" means a publicly  
23          owned system for treating or disposing of sewage or wastes  
24          either by surface or underground methods, including any  
25          equipment, plant, treatment works, structure, machinery,

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1 apparatus or land, in any combination, that is acquired, used,  
2 constructed or operated for the storage, collection, reduction,  
3 recycling, reclamation, disposal, separation or treatment of  
4 water or wastes or for the final disposal of residues resulting  
5 from the treatment of water or wastes, such as pumping and  
6 ventilating stations, facilities, plants and works, outfall  
7 sewers, interceptor sewers and collector sewers and other real  
8 or personal property and appurtenances incident to their use or  
9 operation. "Wastewater facility" also includes a nonpoint  
10 source water pollution control project as eligible under the  
11 [~~federal~~] Clean Water Act [~~of 1977~~];

12 [~~H.~~] I. "account" means the wastewater suspense  
13 account;

14 [~~F.~~] J. "board" means the state board of finance;

15 [~~J.~~] K. "bonds" means wastewater bonds or other  
16 obligations authorized by the commission to be issued by the  
17 board pursuant to the Wastewater Facility Construction Loan  
18 Act;

19 [~~K.~~] L. "Clean Water Act" means the federal Clean  
20 Water Act of 1977 and its subsequent amendments or successor  
21 provisions;

22 [~~F.~~] M. "federal securities" means direct  
23 obligations of the United States, or obligations the principal  
24 and interest of which are unconditionally guaranteed by the  
25 United States, or an ownership interest in either of the

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1 foregoing;

2 ~~[M-]~~ N. "force account construction" means  
3 construction performed by the employees of a local authority  
4 rather than through a contractor;

5 ~~[N-]~~ O. "holders" means persons who are owners of  
6 bonds, whether registered or not, issued pursuant to the  
7 Wastewater Facility Construction Loan Act;

8 ~~[O-]~~ P. "issuing resolution" means a formal  
9 statement adopted by the board to issue bonds pursuant to the  
10 Wastewater Facility Construction Loan Act, including any trust  
11 agreement, trust indenture or similar instrument providing  
12 terms and conditions for the bonds to be issued; and

13 ~~[P-]~~ Q. "recommending resolution" means a formal  
14 statement adopted by the commission recommending to the board  
15 that bonds be issued pursuant to the Wastewater Facility  
16 Construction Loan Act, including any trust agreement, trust  
17 indenture or similar instrument providing the terms and  
18 conditions for the bonds that are issued."

19 Section 3. Section 74-6A-4 NMSA 1978 (being Laws 1991,  
20 Chapter 172, Section 4) is amended to read:

21 "74-6A-4. FUND CREATED--ADMINISTRATION.--

22 A. There is created in the state treasury a  
23 revolving loan fund to be known as the "wastewater facility  
24 construction loan fund", which shall be administered by the  
25 division as agent for the commission and operated as a separate

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1 account. The commission is authorized to establish procedures  
2 and adopt regulations as required to administer the fund in  
3 accordance with the Clean Water Act and state law. Any  
4 regulations relating to the issuance of bonds and the  
5 expenditure of proceeds of bond issues shall be approved by the  
6 board. The commission shall, whenever possible, coordinate  
7 application procedures and funding cycles with the New Mexico  
8 Community Assistance Act.

9 B. The following shall be deposited directly in the  
10 fund:

11 (1) grants from the federal government or its  
12 agencies allotted to the state for capitalization of the fund;

13 (2) funds as appropriated by the legislature  
14 to implement the provisions of the Wastewater Facility  
15 Construction Loan Act or to provide state matching funds that  
16 are required by the terms of any federal grant under the Clean  
17 Water Act;

18 (3) loan principal, interest and penalty  
19 payments if required by the terms of any federal grant under  
20 the Clean Water Act;

21 (4) money transferred from the account as  
22 needed to fulfill requirements of the Clean Water Act; and

23 (5) any other public or private money  
24 dedicated to the fund.

25 C. Money in the fund is appropriated for

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1 expenditure by the commission in a manner consistent with the  
2 terms and conditions of the federal capitalization grants and  
3 the Clean Water Act and may be used:

4 (1) to provide loans for the construction or  
5 rehabilitation of wastewater facilities;

6 (2) to purchase, refund or refinance  
7 obligations incurred by local authorities in the state for  
8 wastewater facilities where the obligations were incurred and  
9 construction commenced after March 7, 1985;

10 (3) to guarantee, or purchase insurance for,  
11 obligations of local authorities to improve credit market  
12 access or reduce interest rates;

13 (4) to provide a source of revenue or security  
14 for the payments of principal and interest on bonds recommended  
15 by the commission and issued by the board if the proceeds of  
16 the bonds are deposited in the fund to the extent provided in  
17 the terms of the federal grant;

18 (5) to provide loan guarantees for similar  
19 revolving funds established by local authorities;

20 (6) to fund the administrative expenses of the  
21 board, the commission and the division necessary to implement  
22 the provisions of the Wastewater Facility Construction Loan  
23 Act, including but not limited to costs of servicing loans and  
24 issuing bonds, fund start-up costs, financial management and  
25 legal consulting fees and reimbursement costs for support

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1 services from other state agencies; and

2 (7) to fund other programs for which the  
3 federal government authorizes use of wastewater grants or to  
4 provide for any other expenditure consistent with the Clean  
5 Water Act grant program and state law.

6 D. Pursuant to regulations adopted by the  
7 commission, the division may impose and collect [~~a~~] an  
8 administrative fee from each local authority that receives  
9 financial assistance from the fund, which fee shall be [~~used~~  
10 ~~solely for the costs of administering the fund~~] deposited in  
11 the clean water administrative fund.

12 E. Money not currently needed for the operation of  
13 the fund or otherwise dedicated may be invested according to  
14 the provisions of Chapter 6, Article 10 NMSA 1978, and all  
15 interest earned on such investments shall be credited to the  
16 fund. Money remaining in the fund at the end of any fiscal  
17 year shall not revert to the general fund but shall accrue to  
18 the credit of the fund.

19 F. Acting as agent for the commission, the division  
20 shall maintain full authority for the operation of the fund in  
21 accordance with applicable federal and state law, including but  
22 not limited to preparing the annual intended use plan and  
23 ensuring that loan recipients are on the state priority list or  
24 otherwise satisfy Clean Water Act requirements.

25 G. The division shall establish fiscal controls and

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1 accounting procedures that are sufficient to [~~assure~~] ensure  
2 proper accounting for fund payments, disbursements and balances  
3 and shall provide an annual report and an annual independent  
4 audit on the fund to the governor and to the United States  
5 environmental protection agency as required by the Clean Water  
6 Act."

7 Section 4. EFFECTIVE DATE.--The effective date of the  
8 provisions of this act is July 1, 2007.

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